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6. Vendor and Purchaser (§ 174*)—Rule of Compensation for Shortage in Number of Trees in Orchard Sold, Stated.—Where an apple orchard was purchased under representations that it contained 500 bearing trees, when there were in fact only 332, the value of the trees lost must be determined with reference to the price agreed upon for the whole estate.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

7. Reference (§ 65*)—Exception to Report Properly Overruled Where No Objection Was Made at Hearing.—An exception to the report of a commissioner appointed to assess damages for a shortage of trees in an orchard purchased that the wrong measure of damages was used was properly overruled, where no objection to evidence on that ground was made until the commissioner had made his finding, and no rebuttal testimony was introduced.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 565.]

Appeal from Circuit Court, Bedford County.

Bill by W. B. Holland against J. C. Logwood, Jr., and others to rescind a contract for the sale of real estate or for damages. From a decree overruling defendants' demurrer, refusing a rescission, and directing a commissioner to ascertain damages, and a decree awarding a recovery, defendants appeal. Affirmed.

OLIVER v. COMMONWEALTH.

Sept. 22, 1921.

[108 S. E. 577.]

Intoxicating Liquors (§§ 236 (6½, 7, 20)*)—Evidence Held Insufficient to Support Conviction of Possessing, Transporting, and Offering for Sale.—In the prosecution for illegally possessing, transporting, exposing for sale, and soliciting orders for ardent spirits in violation of the Prohibition Law, evidence held insufficient to support a conviction.

Error to Hastings Court of Richmond.

J. J. Oliver was convicted of violating the prohibition law, and he brings error. Reversed and remanded for new trial.

MATNEY et al. v. YATES.

Sept. 22, 1921.

[108 S. E. 578.]

1. Trusts (§ 372 (3)*)—Evidence Held to Show Release from Trust of Agent Taking Title in Himself.—Where complainants, desiring to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

acquire the interest of certain heirs in a tract of land, procured respondent to act as agent, but, the heirs demanding more money than he was authorized to pay, respondent took title in himself, risking a repudiation of his agency by complainants, in a suit wherein complainants sought to hold respondent as trustee, evidence held to sustain a finding that complainants, by refusing to pay respondent a reasonable remuneration as agreed, thereby released him from his trust.

2. Equity (§ 427 (1)*)—Dismissal without Disposition of Affirmative Defense Not Supported by Evidence Not Error.—Where respondent in a suit involving title to land set up an elder title in himself, it was not error, on dismissal of complainants' suit, to fail to take action respecting such title, where there was no evidence of its existence.

3. Evidence (§ 343 (7)*)—Copy of County Clerk's Record of Land Patent Held Inadmissible.—Code 1904, § 2367, referring to the recordation of new grants only, held not to authorize the recordation of an original land patent from the commonwealth in the office of the county clerk, so as to make a certified copy of such record admissible in evidence under section 3334, in lieu of the original.

4. Judgment (§ 418*)—Refusal to Take Bill as Confessed for Want of Answer Held Not Error.—Where a third amended bill was filed without leave and no process issued thereon, and the cause was brought to trial subject to objection to the bill, which objection was not passed on, and the substance of the bill was covered by the answer to the previous bills, it was not error not to take such bill as confessed for want of an answer.

Appeal from Circuit Court, Buchanan County.

Suit by John Matney and another against Richard Yates. From a decree of dismissal, complainants appeal. Affirmed.

RUDOLPH *v.* FARMERS' SUPPLY CO., Inc., et al.

Sept. 22, 1921.

[108 S. E. 638.]

1. Corporations (§ 428 (3)*)—Knowledge Gained by Salesman and Acting Secretary of Corporation in Casual Conversation Held Not Notice to Corporation.—Knowledge gained by a salesman and acting secretary of a corporation in a casual conversation with dealer in secondhand cars that such dealer had a certain car for sale which had been sold under a conditional contract by the corporation to the person who had sold it to the secondhand dealer was not notice

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.